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July 27, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: December 22, 2005

Case Number: TSO-0330

This Decision concerns the eligibility of XXXX XX XXX XXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual should be granted a security clearance. As set forth in this Decision, I have determined that the individual's request for a security clearance should be approved.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

The individual requested a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that her request for an access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding her eligibility. This derogatory information is described in a Notification Letter issued to the individual on November 19, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections k and l. More specifically, the Notification Letter alleges that the individual has: 1) "used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances," and 2) "engaged in unusual conduct or is subject to circumstances which tend to show that [she] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [she] may be subject to pressure, coercion, exploitation, or duress which may cause [her] to act contrary to the best interests of national security." 10 C.F.R. §§ 710.8(k) and (l) (Criterion K and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criteria K, the Notification Letter states that on August 4, 2005, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who issued a report in which he diagnosed the individual with Stimulant Abuse, Cocaine and Methamphetamine, in Remission, based upon diagnostic criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR). The Notification Letter further states that during the psychiatric interview and in a Personnel Security Interview (PSI) conducted on April 26, 2005, the individual admitted to substantial use of illegal drugs in the past, with the two most recent episodes occurring in February 2000 and July 2000 when she used methamphetamine.

Under Criterion L, the Notification Letter states that the individual: (1) was arrested in September 2000 on a Class IV felony charge of Sending/Receiving Drugs through the Mail, (2) failed to report, in August 2000, receiving a package in the mail containing \$50 and a substance which looked like cocaine; (3) successfully completed an outpatient substance abuse program in 1988-1989 yet returned to using illegal drugs in 1997 at her husband's request, (4) used an illegal drug in 1985, at a time that she was employed at a DOE nuclear power generating facility; and (5) did not make an unequivocal commitment to never use illegal drugs again during the PSI conducted on April 26, 2005.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on December 22, 2005, the individual exercised her right under Part 710 to request a hearing in this

matter, 10 C.F.R. § 710.21(b), and on January 5, 2006, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called the DOE Psychiatrist as DOE Security's sole witness. Apart from testifying on her own behalf, the individual called as witnesses a psychiatrist, her fiancé, her pastor and her supervisor. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel will be cited as "DOE Exh." and those submitted by individual cited as "Ind. Exh."

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in February 2003, and soon thereafter, in March 2003, submitted her completed Questionnaire for National Security Positions (QNSP) to obtain a security clearance. However, derogatory information presented in the QNSP and obtained during the background investigation of the individual, principally regarding her use of illegal drugs, resulted in a determination by DOE Security to conduct a PSI with the individual. The PSI, conducted on April 26, 2005, failed to resolve the security concerns and she was therefore referred to the DOE Psychiatrist for an evaluation on August 4, 2005. Following is a summary of the derogatory information regarding the individual's use of illegal drugs, as revealed by the individual's QNSP, background investigation, PSI and psychiatric interview.

The individual began using marijuana when she was 13 years old and at age 15 began to experiment with a number of illegal drugs. During her later years in high school through her early college years, the individual admittedly used acid, marijuana, hashish, mescaline, quaaludes, cocaine, mushrooms, amphetamines, barbiturates, LSD and methamphetamine. The individual typically gave money to friends to buy drugs for her but, in one instance, she purchased and sold liquid LSD to college students on sugar cubes. The individual's heaviest period of drug use was in 1979-80. In 1981, the individual married her former high school boyfriend who was also a heavy drug user. The individual had two children, daughters born in 1981 and 1983, and thereafter her involvement with illegal drugs diminished to recreational use of cocaine, which continued during the 1980's. In 1985, the individual received employment at a nuclear power generating facility where she was subject to random drug testing from six to 15 times a year. However, the individual did not test positive on any of the drug tests administered.

In 1988, the individual made the decision to stop using cocaine. At this time, the individual had resumed taking college courses to complete her degree requirements, but overslept and missed the final examination in one of her courses after a night of using cocaine. This incident and her concerns about the impact of drug use upon the parenting of her two daughters led the individual to seek substance abuse treatment. The individual voluntarily entered a 12-week outpatient treatment program in which she participated in group therapy sessions two to three times a week. After completing the treatment program, the individual tried attending Narcotics Anonymous and Cocaine Anonymous but ultimately found an Alcoholics Anonymous (AA) chapter to be personally more suitable based upon the age and background of the participants. The individual remained in AA for approximately two and a half years, and ultimately became an AA sponsor herself.

The individual remained drug-free for nine years, from 1988 to 1997. During these years, the individual's husband had not sought treatment and continued to use illegal drugs on a regular basis. By 1997, her husband's continuing drug use and gambling had caused estrangement between them and placed a substantial strain on their marriage. According to the individual, she thought that she might possibly save her marriage by acceding to her husband's urging to use methamphetamine with him. The individual used methamphetamine with her husband two to four times in early 1997. However, the individual's attempt to reconcile with her husband proved to be unsuccessful, and she again stopped using illegal drugs. In the summer of 1997, the individual and her husband separated and, in January 1998, they were divorced.

In 1999, several traumatic and unfortunate events converged to take a substantial toll on the individual's personal life. At the time, the individual was not employed on a full-time basis, having recently received her graduate degree and considering a career change. In February 1999, the individual's father died and she temporarily relocated to her mother's home to provide support and assist in settling her father's affairs. While there, the individual found out that she was pregnant with her third child. The next month, in March 1999, the individual's ex-husband committed suicide. His family blamed the individual for his suicide and initiated several lawsuits against the individual to block her from receiving any of the ex-husband's estate including insurance and social security proceeds, and to take custody of their two daughters away from the individual. The family made a number of accusations against the individual, including that the individual was a drug abuser. The individual therefore submitted to several drug tests during 1999, all of which were negative.

The individual used her retirement funds to pay the legal costs of fighting the lawsuits brought by her in-laws, while trying to pay household bills. However, the individual could not maintain her mortgage payments and her home was placed in foreclosure. Later, in 1999, the individual filed for Chapter 13 bankruptcy in the amount of \$80,000 which included the mortgage on her home. Ultimately, the individual lost her home

and custody of her two oldest daughters. Her third child, also a daughter, was born in September 1999 and has continued to reside with the individual.

During 2000, the individual had two relapses of methamphetamine use with a friend who provided the drug. On the first occasion in February 2000, the individual and her friend shared 30 lines of methamphetamine over a two-day period. In the spring of 2000, the individual received a job opportunity in another State. During the two days preceding her move to the other State, in July 2000, the individual and her friend shared 50 lines of methamphetamine over a two-day period.

In August 2000, a few weeks after moving, the individual mysteriously received an envelope in the mail from her last State of residence containing \$50, with no note or return address. At the time, the individual suspected that the money was sent by her brother's girlfriend who sometimes gave her support. However, the individual reports that a few weeks later, a package came in the mail containing another \$50 and a clear bag holding a white substance that looked like cocaine. The individual states that she kept the \$50 but flushed the white substance down the toilet. She states further that she did not report the incident because she was a new employee in a new State with a small child, and was afraid of losing her job.

Then, on September 5, 2000, the individual received a third package in the mail. According to the individual, the name on the return address was that of her deceased ex-husband. The individual signed for the package and was arrested at her car after taking the unopened package outside the post office. The package was found to contain 1.7 grams of methamphetamine that had previously been detected by a narcotics canine. The individual was questioned for several hours by postal detectives and the police, but continued to maintain that she did not know who sent her the package. The individual now suspects that the packages were sent by her in-laws seeking vengeance for her ex-husband's suicide. The individual was charged with Sending/Receiving Drugs through the Mail, a Class IV felony. The next day after being released on bail, the individual voluntarily took a drug screen which was negative. The individual was informed by her attorney that it would take \$10,000 to fight the charge in a jury trial if she pled not guilty. The individual did not have the money and therefore decided, on advice of counsel, to plead no contest to a reduced charge of Attempted Possession, a misdemeanor offense. The individual was sentenced to one-year's probation and regular drug testing, but was released from probation early, in June 2001, in the discretion of her probation officer.

Based upon his review of the individual's personnel file and his psychiatric interview, the DOE Psychiatrist issued a report on August 22, 2005, in which he diagnosed the individual with Stimulant Abuse, Cocaine and Methamphetamine, in Remission, based upon diagnostic criteria set forth in the DSM-IV TR. The DOE Psychiatrist acknowledges in his report that this is not an active diagnosis since he had no

knowledge or indication that the individual had used an illegal drug within five years of his evaluation. Thus, he further opined that the individual does not have a mental condition which causes, or may cause, a defect in her judgment and reliability. Nonetheless, the DOE Psychiatrist states in his report that he is making the diagnosis of Stimulant Abuse based upon his clinical judgment, and further that the individual had not in his opinion demonstrated adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommends in his report that the individual maintain abstinence and, over a one-year period, successfully complete an outpatient treatment program of moderate intensity such as a 12-step group at least once a week or individual counseling at a frequency to be determined by her counselor.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Department of Navy v. Egan, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual should be granted an access authorization since I conclude that such granting would

not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criterion K, Illegal Drug Use

(1) Derogatory Information

The individual openly admits that she used a variety of illegal drugs during high school into her early college years, and continued recreational use of cocaine until she entered a rehabilitation program in 1988. See Tr. at 63; DOE Exh. 8 (PSI) at 62-75; DOE Exh. 5 (Report of DOE Psychiatrist) at 2-4. Since that time, the individual has admittedly had two relapses, using methamphetamine two to four times with her husband in 1997 prior to their separation, and again using methamphetamine with a friend on two occasions, in February 2000 and July 2000. Tr. at 67, 71; DOE Exh. 5 at 3. In addition, the DOE Psychiatrist has diagnosed the individual with Stimulant Abuse, Cocaine and Methamphetamine, in Remission. DOE Exh. 5 at 8-9.

For the reasons discussed in the succeeding section of this decision, I do not fully agree with the conclusions reached by the DOE Psychiatrist with regard to the individual. Nonetheless, I find that Criterion K was rightly applied in this case. Illegal drug use raises a security concern for the DOE because it reflects a deliberate disregard for state and federal laws prohibiting such use. Tr. at 74. "The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is the further concern of the DOE that the drug abuser might also pick and choose which DOE security regulations he will obey or not obey with respect to protection of classified information." Personnel Security Hearing, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,512 (1995); see Personnel Security Hearing, Case No. VSO-0283, 27 DOE ¶ 82,822 (1999). I will therefore turn to whether the individual has presented evidence to sufficiently mitigate the legitimate concerns of DOE Security.

(2) Mitigating Evidence

The DOE Psychiatrist has diagnosed the individual with Stimulant Abuse, Cocaine and Methamphetamine, in Remission, based upon criteria set forth in the DSM-IV TR. DOE Exh. 5 at 8-9. The DSM-IV TR generally provides that a diagnosis of Stimulant Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. See *id.* In his report, the DOE Psychiatrist states that he exercised his "clinical judgment" in diagnosing the individual with Stimulant Abuse

despite the fact that there was no evidence that the individual had used an illegal drug since July 2000, more than five years prior to his evaluation. *Id.* at 9. While the DOE Psychiatrist characterizes the individual's Stimulant Abuse as "in Remission," he conceded at the hearing: "I think technically the specifiers of remission status are used for dependence diagnoses not abuse diagnoses. In a sense, her diagnosis is even milder than I put, because technically if a person has an abuse diagnosis it, like, expires after 12 months. It's no longer current and wouldn't even be listed as an active clinical problem." *Tr.* at 133. Thus, despite his diagnosis, the DOE Psychiatrist determined in his report that "[the individual] is not diagnosed as suffering from any mental illness" that may cause a defect in her judgment or reliability. DOE Exh. 5 at 10.^{2/}

Notwithstanding the apparent infirmities in his diagnosis, the DOE Psychiatrist further opines in his report that the individual has not demonstrated adequate evidence of rehabilitation or reformation from her Stimulant Abuse. DOE Exh. 5 at 9. The report states:

There is not adequate evidence of rehabilitation or reformation. Negative prognostic signs include a family history positive for substance abuse, initial drug use at an early age, abuse of many drugs, and possible development of tolerance to the effects of cocaine during her period of heaviest use. [The individual] relapsed into methamphetamine use in 1997 after a nine-year period of abstinence. She acknowledged two-day methamphetamine binges in early 2000 and July 2000. On 9/5/00 she was arrested for sending drugs through the mail after a second delivery of methamphetamine was received by her. She denied any involvement in having the drugs sent to her (although I did not find her explanation believable). She expressed an equivocal commitment to remaining drug free in the future . . .

Id. at 9. Thus, the DOE Psychiatrist recommended that, in order to achieve adequate rehabilitation or reformation, the individual must maintain her abstinence from illegal drugs and, over a one-year period, successfully complete an outpatient treatment program of moderate intensity such as a 12-step group at least once a week or individual counseling in a frequency to be determined by her counselor. *Id.* at 9-10. At the hearing, the DOE Psychiatrist reiterated his concerns with regard to the individual but reduced his recommendation for rehabilitation or reformation to six months of sessions with "a competent counselor." *Tr.* at 146-47. For the reasons below,

^{2/} For this reason, the Notification Letter alleges derogatory information concerning the individual's past drug use under Criterion K but, despite the diagnosis of the DOE Psychiatrist, does not allege that the individual has: 1) "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]." 10 C.F.R. § 710.8(h).

I do not accept the recommendation of the DOE Psychiatrist and find that the individual has already established reformation from her past use of illegal drugs.

At the hearing, the individual called a psychiatrist (Individual's Psychiatrist) who evaluated the individual in March 2006, after reviewing the report of the DOE Psychiatrist and other pertinent information. Tr. at 15-16. The Individual's Psychiatrist did not contest the clinical judgment of the DOE Psychiatrist in making the diagnosis of Stimulant Abuse, which the Individual's Psychiatrist categorized as being in "sustained full remission." Tr. at 17-18. However, the Individual's Psychiatrist strongly contested the opinion of the DOE Psychiatrist that the individual requires treatment or counseling to establish rehabilitation or reformation particularly where, as here, the individual does not have an active diagnosis. Tr. at 18. The Individual's Psychiatrist, who has a substantial background in the treatment of substance abuse, testified: "I have a fairly strong feeling about giving opinions as a psychiatrist in the absence of a psychiatric diagnosis It's not common in my experience to refer people for treatment when there is not an active diagnosis, or something I've diagnosed. I'm trying to think of a circumstance where that's occurred, and I can't think of one." Tr. at 22, 32.^{3/}

The Individual's Psychiatrist further expressed his view that the DOE Psychiatrist had placed undue weight on the "negative prognostic signs" cited in his report, which the Individual's Psychiatrist found to be substantially overcome by positive prognostic indicators with respect to the individual. The Individual's Psychiatrist pointed out that the individual: (1) has a relatively stable work history, Tr. at 18-19; (2) had a positive experience with her treatment program and participation in AA, during the 1988-1990 time frame, when she ultimately served as an AA sponsor, Tr. at 19; (3) has now gotten very involved with her church, "what I would call a substitution of religious beliefs for the addiction . . . in a genuine way," id.; (4) has been abstinent for six years at the time of the hearing, Tr. at 20; (5) had a favorable period of abstinence from 1988 through 1997, id.; (6) has recently obtained evaluations by two treatment programs

^{3/} The rarity and impracticality of the DOE Psychiatrist's treatment recommendation were revealed during the individual's testimony. The individual testified that after receiving the report of the DOE Psychiatrist, she made an appointment with her Employee Assistance Program (EAP) in January 2006. However, after evaluating the individual and considering her prolonged period of abstinence, the EAP counselor determined that no counseling or treatment was necessary. Tr. at 123-24. The individual was also evaluated by two separate substance abuse treatment facilities, in March 2006 and April 2006, which similarly determined that the individual did not meet the criteria for admission to their outpatient treatment programs. See Ind. Exh.'s 1 and 3. Ironically, the DOE Psychiatrist himself acknowledged during his testimony that medical insurance carriers are not likely to provide coverage to the individual for the very counseling he recommends under the present circumstances where the individual does not have an active diagnosis. Tr. at 140-41.

which both determined that the individual does not need treatment, *id.*, see note 3, *supra*; (7) had two brief relapses, in 1997 and 2000, that came at times when she was under extreme stress, “on the scale of one to a hundred stressors, were hovering at a hundred,” *Tr.* at 20-21; (8) now has stable family relationships and support, *Tr.* at 21; and (9) gave a “really straightforward . . . more honest response” to the interviewer during the PSI when she apparently failed to give an unequivocal guarantee that she would never use illegal drugs again, *id.*^{4/} In conclusion, the Individual’s Psychiatrist expressed his opinion that without the counseling recommended by the DOE Psychiatrist, the individual has a “very small” chance of relapse which he approximated as “less than two percent for the next five years.” *Tr.* at 24.^{5/}

The testimony and evidence presented at the hearing support the position of the Individual’s Psychiatrist. I was particularly impressed with the testimony of the individual, her fiancé and her pastor, concerning the individual’s present lifestyle and the choices she has made during the past few years. The individual’s fiancé is employed by the same DOE contractor and he met the individual in late 2003. *Tr.* at 35. Her fiancé testified that they began dating and he invited her to his church where he is very involved. *Tr.* at 36-37. The individual began attending the church on a

^{4/} During the PSI, the individual (“I”) responded to the personnel security specialist (“S”) as follows:

S: What are your future intentions concerning the use of illegal drugs?

I: Oh, I hope to never use drugs again, ever, ever.

S: Hope to never use? So you’re not saying that you will never use or anything --

I: I can’t tell you I will never use drugs again. And I think anybody that has ever used drugs or alcohol that tells you, I will never do that again --

S: Okay.

I: -- that, that they really are not being, that they don’t know --

S: Okay.

I: -- because if you get knocked down and the wind is completely out of your sails and it’s, I, I just don’t know. And that’s being as honest as I can be with you . .

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DOE Exh. 8 (PSI) at 78.

^{5/} Interestingly, the DOE Psychiatrist apparently agrees that the individual has a low chance of relapse despite adhering to his belief that the individual requires counseling to achieve rehabilitation or reformation. Citing a study on the length of abstinence and chance of relapse, the DOE Psychiatrist stated that: “[T]wo years you got into the 95th percentile . . . And then I think out at five years you were up into the 99th percentile. And again this is using relapse with the strict definition of any break in sobriety. . .” *Tr.* at 153. The DOE Psychiatrist later conceded that after five years of sobriety on the part of the individual, “I was being, from that line of reasoning, strict in requiring some sort of treatment.” *Tr.* at 158.

regular basis in February 2004, was baptized and now the church has become a focal point of their life together. See Tr. at 37, 48. The individual confirmed that she and her fiancé socialize almost exclusively with their church friends. Tr. at 90.

The individual's pastor spoke glowingly about the individual and her spiritual growth since coming to the church. The pastor testified that he sees the individual several times a week and has contact with the individual on a social basis. Tr. at 48. The pastor described the individual as someone "we can always count on . . . I would be comfortable with her serving in any leadership role in the church. . . . She's a genuine person, and a pleasure to know and have as a friend . . . She's very consistent, solid as a rock." Tr. at 48, 50. The pastor is aware of the individual's past use of drugs, as well as the traumatic experiences she suffered with her difficult divorce and subsequent suicide of her ex-husband. Tr. 49. The pastor was very persuasive in his testimony, however, that "[the individual] I've known over the past two years is a very different person. It's hard for me to even believe this is the same person that I know, how she's come through those things in her past. But she is a very different person today." Id. The individual is now a Sunday school teacher. The pastor testified that the parents of the students the individual teaches in Sunday school trust the individual and love the job she is doing with their children. Tr. at 56.

The individual's fiancé testified that the individual has a strong support network with himself, their church and family. The church membership is relatively small, with only 150 members, and the pastor testified that "[o]ur church is a family" in support for the individual. Tr. at 47, 50. Both her fiancé and pastor described the individual as a wonderful, devoted mother to her youngest daughter who is now six years old. Tr. at 38-39, 56. The individual's fiancé has now built a close relationship with her young daughter. Tr. at 39. The individual also maintains a close relationship with her two older daughters who reside in a neighboring State. Tr. at 38-39. One of the daughters came to see the individual's baptism at the church, and has now joined an affiliated church in her own State. Tr. at 52. The relationships in the individual's life at this time support the conclusion of the Individual's Psychiatrist that it is not likely that she will be susceptible to inducement of return to illegal drug use. Tr. at 28.

Based upon the record presented in this case, I am persuaded that the individual has entered a new stage of her life and has put her past involvement with illegal drugs behind her. I found the individual to be forthright and convincing in expressing her intention to not use illegal drugs again. See Tr. at 94-95. The individual stated forcefully that "I have absolutely no desire to use drugs now or in the future, none." Tr. at 105. The individual explained that "I was just trying to be truthful" in making what was interpreted as an equivocal statement to not use drugs again. Tr. at 94, see note 4, *supra*. The individual clarified: "And even though I told her that, I said, no, I don't plan to ever, ever use drugs again, . . . to me that's unequivocal. No, I don't plan to use

drugs again ever.” Tr. at 95. With nearly six years of sobriety at the time of the hearing, I am inclined to accept the individual’s word.^{6/}

For the foregoing reasons, I find that the individual has sufficiently mitigated the concerns of DOE Security under Criterion K with regard to her past use of illegal drugs. I do not accept the recommendation of the DOE Psychiatrist that six months of counseling is required in order for the individual to demonstrate rehabilitation or reformation from her past use of illegal drugs, but find that she is reformed at the present time with a minimal chance of relapse. I find that the individual has become a responsible person with a stable lifestyle, who is firmly committed to her family responsibilities and religious convictions. The individual has dealt openly and honestly with her past use of illegal drugs, and I believe the individual now can be trusted to act in a manner consistent with the best interests of national security.

B. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites: (1) the circumstances leading to the individual’s arrest in September 2000, on a felony charge of Sending/Receiving Drugs through the Mail, (2) the individual’s use of illegal drugs in 1985, while working at nuclear power generating facility, (3) her relapse into drug use with her husband in 1997, after successfully completing a substance abuse program in 1988-1989; and (4) her hesitancy during the April 2005 PSI to make an unequivocal commitment that she will never use illegal drugs again. I find that these security concerns are subsumed and equally abated by my determination in the foregoing section of this Decision that the individual has sufficiently mitigated the concerns associated with her past use of illegal drugs.

However, I find that one issue remains with regard to the individual’s September 2000 arrest. In his report, the DOE Psychiatrist called the individual’s honesty into question, stating that “[the individual] denied any involvement in having the drugs sent to her (although I did not find her explanation believable).” DOE Exh. 5 at 9. At the hearing, the DOE Psychiatrist reiterated his concern: “I certainly have no evidence to think that she did get drugs through the mail, or do anything wrong. It’s still just . . . a little suspicious. . . .[I]t didn’t seem terribly believable.” Tr. at 144-45.

I note, however, that the individual has been consistent in giving her account of the arrest, and adhering to her statement that she was not using drugs during this time period and she has no idea who sent the illegal drugs to her in the mail. The individual maintained her account after two hours of questioning by the postal

^{6/} During the PSI and at the hearing, the individual stated that she is more than willing to sign a Drug Certification attesting that she will not use illegal drugs while holding a DOE security clearance. Tr. at 95-96.

detectives followed by another two hours of questioning by the police before she was charged. Tr. at 80.^{7/} The individual was consistent in recounting the circumstances of her arrest during the PSI and appeared truthful in describing the events during her testimony. See DOE Exh. 5 at 98-121; Tr. at 74-81. The individual's fiance describes the individual as "brutally honest." Tr. at 45. He testified that the individual relayed to him in private conversations that she does not know who sent the drugs in the mail but suspects it may have been one of her former in-laws. See Tr. at 40-41. The Individual's Psychiatrist found her to be honest and forthcoming, and believes she has been "straightforward" in describing the events leading to her arrest. Tr. at 29. Thus, I find nothing in the record to support the DOE Psychiatrist's suspicion that the individual has not been truthful about having no involvement with the drugs sent to her in the mail in August and September 2000. Moreover, I find that the individual's decision to enter a no contest plea to a misdemeanor charge of Attempted Possession was reasonable under the circumstances and not an indication that she actually attempted to possess illegal drugs. See Personnel Security Hearing, Case No. VSO-0141, 26 DOE ¶ 82,785 (1997).

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(k) and (l) in denying the individual's request for an access authorization. For the reasons I have described above, I find that the individual has sufficiently mitigated the associated security concerns. I therefore find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual should be granted an access authorization. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: July 27, 2006

^{7/} I further note that, on her own volition, the individual had a urine drug screening on the day following her release and tested negative for the presence of any illegal drug. Tr. at 80.